

CITY AFFILIATE PROGRAM AGREEMENT

This Affiliate Program Agreement (the "Agreement") is effective as of ____ __, 2016 (the "Effective Date") by **Green Mountain Energy Company**, a Delaware corporation, with offices at 1201 Fannin Street, Houston, TX 77002 ("**Green Mountain**"), and **City of El Lago**, a Municipality, with an office at 411 Tallowood Drive, El Lago, TX 77586 ("**City**").


SECTION 1: SCOPE.

This Agreement contains the terms and conditions that will apply to the parties' joint participation in the City Affiliate Program ("Program").

SECTION 2: CITY AFFILIATE PROGRAM.

The Program will provide residents of City ("Affiliates") the opportunity to receive a discount off of their residential electric bills. Green Mountain will make the Program available to City Affiliates online, through a website where Affiliates who are current Green Mountain residential customers can submit information, including a unique City code and Affiliate account number to register for a discount on their monthly residential electric bill. Affiliates who are not current Green Mountain residential customers will receive information about how to become a customer in order to register for the discount. The website will also provide a phone number to call customer service for assistance.

When an Affiliate accesses Green Mountain's City Affiliate Program webpage and registers for the program, and after we have confirmed that the customer has complied with other requirements of the Program, Green Mountain will apply a discount equal to 5% of the customer's recurring energy charges for the duration of the customer's affiliation with the City and as long as the City has an active contract with Green Mountain, including, without limitation, an electricity sales agreement, marketing referral agreement, marketing agreement, license agreement or lease. The 5% discount will be calculated as 5% of the recurring Green Mountain energy charges and any passed-through recurring TDSP charges, and will exclude any noncurring charges or fees and any taxes or tax reimbursement charges. Green Mountain will apply the discount as a credit on each eligible customer's bill within two billing cycles of the date the Affiliate completes online registration for the discount.

City agrees to supply the name and contact information of a representative of the City to periodically verify that an Affiliate is a resident of the City. Green Mountain may refuse to provide or may discontinue the discount for any customer determined by Green Mountain to not be a resident of the City. 

Green Mountain will supply City a unique code that Affiliates must enter on the webpage in order to access the registration form. Green Mountain will provide City with the aforementioned password, to distribute to Affiliates announcing the Program.

SECTION 3: GRANT OF LICENSES.

Subject to the terms and conditions of this Agreement, Green Mountain hereby grants to City, a non-exclusive, fully paid license to use, reproduce and display Green Mountain's trademarks, trade names, hypertext links, and related graphics and textual materials ("Indicia") in connection with the activities described in this Agreement. All such uses are subject to the prior written approval of Green Mountain.

SECTION 4: OWNERSHIP.

4.1 By Green Mountain. City acknowledges and agrees that: (i) as between Green Mountain on the one hand, and City on the other, Green Mountain owns all right, title and interest in the Green Mountain Indicia; (ii) nothing in this Agreement shall confer in City any right of ownership in the Green Mountain Indicia or other intellectual property; and (iii) City shall not now or in the future contest the

validity of the Green Mountain Indicia. No licenses are granted by either party except for those expressly set forth in this Agreement.

SECTION 5: MARKETING MATERIALS.

Marketing Materials. All marketing materials, advertising, and presentations by either Party for the City Affiliate program, must be approved by all Parties, *provided*, that disclosures to customers of any information that a Party reasonably believes are necessary to comply with applicable law, regulation or good industry practice are not subject to the approval of the other Parties.

SECTION 6: TERM AND TERMINATION.

- 6.1 Stated Term of Agreement. The term of this Agreement shall commence on the Effective Date and end in the event the contract between Green Mountain and City expires or terminates. Either Party may terminate this Agreement with thirty (30) days' written notice to the other Party. The Agreement shall automatically renew when the contract between Green Mountain and the City renews.
- 6.2 Termination for Cause. Either party shall have the option to terminate this Agreement in the event of a default by the other party.
- 6.3 Survival. All obligations regarding limitations of liability and waivers survive termination indefinitely, default rights and remedies and confidentiality obligations survive for the limitations period under the applicable statute of limitations.

SECTION 7: LIMITATION OF LIABILITY

Neither Party will be liable for any consequential, punitive, exemplary, indirect or incidental damages, or other business interruption damages.

SECTION 8: INDEMNIFICATION

SECTION 9: PUBLIC ANNOUNCEMENTS.

The parties will cooperate to create any and all appropriate public announcements relating to the relationship set forth in this Agreement. Neither party shall make any public announcement regarding the existence or content of this Agreement or marketing plans under any Project Statement without the other party's prior written approval and consent.

SECTION 10: NOTICE; MISCELLANEOUS PROVISIONS.

- 10.1 Notice. All notices required under this Agreement shall be in writing and deemed effective when received by either (i) registered mail, (ii) certified mail, return receipt requested, or (iii) overnight mail, addressed and sent to the attention of:

Green Mountain Energy: Green Mountain Energy Company
1201 Fannin Street
Houston, TX 77002
Attn: Lu Xu

City: City of El Lago
411 Tallowood Drive
El Lago, TX 77586

Attn: _____

- 10.2 Compliance With Law. In its performance of this Agreement, each party will comply with all applicable laws, regulations, orders or other requirements, now or hereinafter in effect, of governmental authorities having jurisdiction.
- 10.3 Ownership of Customer Information. Green Mountain retains all right, title and interest to information provided to Green Mountain by customers who participate in marketing activities conducted under this Agreement.
- 10.4 Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement, in whole or in part, without the other party's written consent; provided, however, that: (i) either party may assign this Agreement without such consent to an Affiliate or in connection with any merger, consolidation, any sale of all or substantially all of such party's assets or any other transaction in which more than fifty percent (50%) of such party's voting securities are transferred. "Affiliate" shall mean any City or any other entity worldwide, including, without limitation, corporations, partnerships, joint ventures, and limited liability companies, in which a party owns a controlling interest or is in common control with. For purposes of this definition, "control" means at least a fifty percent (50%) ownership of the equity or financial interest entitled to vote for directors or others with the power to direct the business. Any attempt to assign this Agreement other than in accordance with this provision shall be null and void.
- 10.5 Governing Law. The rights and duties of the Parties are governed by, construed, enforced, and performed in accordance with the Law of the State of Texas (without giving effect to principles of conflicts of laws).
- 10.6 Partial Invalidity. If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force.
- 10.7 Independent Contractors. The relationship of the parties to this Agreement is solely that of independent contractors, and neither this Agreement, nor any terms and conditions contained herein may be construed as creating or constituting a partnership, joint venture or agency relationship between the parties.
- 10.8 Waiver. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.
- 10.9 Entirety. This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings, both written and oral, regarding such subject matter. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.
- 10.10 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute a single instrument.
- 10.11 Facsimile Signatures. Execution and delivery of this Agreement may be evidenced by facsimile transmission.

The parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

GREEN MOUNTAIN ENERGY COMPANY

CITY OF EL LAGO

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____